

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRASSICA PROTECTION PRODUCTS LLC and  
THE JOHNS HOPKINS UNIVERSITY

Plaintiffs,

-against-

CAUDILL SEED & WAREHOUSE CO., INC.  
d/b/a CAUDILL SEED CO.,

Defendant.

07 Civ. 7844 (SAS)

**JOINT CLAIM CONSTRUCTION  
AND PREHEARING STATEMENT**

Pursuant to Paragraph (3)(h) of the Scheduling Order filed November 14, 2007 (“the Scheduling Order”), Plaintiffs, Brassica Protection Products LLC (“Brassica”) and The Johns Hopkins University (“JHU”), by and through their undersigned counsel, and Defendant, Caudill Seed & Warehouse Co., Inc. (“Caudill”), by and through their undersigned counsel, hereby provide a Joint Claim Construction and Prehearing Statement.

**I. AGREED-UPON CLAIM LANGUAGE**

Pursuant to Paragraph (3)(h)(1) of the Scheduling Order, Plaintiffs and Defendant agree that claim term “**broccoli**” as found in Claims 23, 24, and 25 of U.S. Patent No. 7,303,770 (“the ‘770 patent”) should be construed to mean: *Brassica oleracea italica*.

## **II. DISPUTED CLAIM LANGUAGE**

The following claims of the following patents are at issue in this matter. Claim terms requiring construction, in the opinion of Plaintiffs and/or Defendant, are set forth in bold. Appendix A, in the cited rows, sets forth the parties' proposed constructions for the cited terms. When not applicable ("N/A") is listed, this indicates that neither party requests interpretation of any term from that claim clause.

Pursuant to Paragraph (3)(h)(2) of the Scheduling Order, Appendices B and C set forth "an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim." Appendix B provides Plaintiffs' references and evidence; and Appendix C provides Defendant's references and evidence.

A. U.S. Patent No. 5,725,895:

U.S. Patent No. 5,725,895		
Claim	Text	Appendix A Row(s)
14.	A method of preparing a <b>food product</b> , comprising	3
	introducing <b>cruciferous</b> seeds,	5
	wherein said seeds produce sprouts having at least 200,000 units per gram fresh weight of Phase 2 enzyme-inducing potential when measured after 3-days of growth and <b>non-toxic levels of indole glucosinolates and their breakdown products and goitrogenic hydroxybutenyl glucosinolates</b> ,	7
	into another edible ingredient.	N/A
15.	A method of preparing a <b>food product</b> , comprising	3
	<b>extracting glucosinolates and isothiocyanates with a non-toxic solvent and isothiocyanates from cruciferous seeds, sprouts, plants or plant parts</b> ,	1, 5, 8
	wherein seeds that produce said sprouts, plant, or plant parts, have at least 200,000 units per gram fresh weight of Phase 2 enzyme-inducing potential when measured after 3-days of growth	N/A
	and wherein said seeds, sprouts, plants or plant parts have <b>non-toxic levels of indole glucosinolates and their breakdown products and goitrogenic hydroxybutenyl glucosinolates</b> ,	6
	and <b>recovering the extracted glucosinolates and isothiocyanates</b> .	1, 11

**B. U.S. Patent No. 5,968,567**

<b>U.S. Patent No. 5,968,567</b>		
<b>Claim</b>	<b>Text</b>	<b>Appendix A Row(s)</b>
9.	A method of preparing a <b>human food product</b> , comprising	3, 4
	<b>extracting glucosinolates and isothiocyanates</b>	1, 9
	<b>from cruciferous</b> sprouts rich in glucosinolates, with the exception of <i>Brassica oleracea capitata</i> , <i>Lepidium sativum</i> , <i>Sinapis alba</i> , <i>Sinapis nigra</i> , and <i>Rahpanus sativus</i> sprouts, harvested between the onset of germination up to and including the 2-leaf stage, or from <b>cruciferous</b> seeds, or a combination thereof,	5, 9
	with a non-toxic solvent,	N/A
	<b>removing the extracted sprouts, seeds, or a combination thereof from said solvent</b> and,	1, 10
	<b>and recovering the extracted glucosinolates and isothiocyanates.</b>	1, 11
16.	The method according to claim 9, further comprising the step of	N/A
	<b>drying said extracted glucosinolates and isothiocyanates.</b>	1, 12
18.	<b>An extract prepared according to the method of any one of claims 9, 16 or 17.</b>	1, 13

C. U.S. Patent No. 6,177,122

U.S. Patent No. 6,177,122		
Claim	Text	Appendix A Row(s)
1.	<b>A non-toxic solvent extract of a crucifer seed</b>	1, 5, 14
	<b>or cruciferous sprout,</b>	5, 14
	wherein said sprout is (A) harvested between the onset of germination up to an including the 2-leaf stage, and (B) not a <i>Brassica oleracea capitata</i> , <i>Lepidium sativum</i> , <i>Sinapis alba</i> , <i>Sinapis nigra</i> , or <i>Raphanus sativus</i> sprout.	N/A
2.	A non-toxic solvent <b>extract</b> according to claim 1,	1
	wherein the solvent used to <b>extract said seed or sprout</b> is selected from the group consisting of water, liquid carbon dioxide, and ethanol.	1, 15
5.	A non-toxic solvent <b>extract</b> of according to claim 1,	1
	wherein <b>said extract is dried, cooled, frozen or freeze-dried.</b>	1, 16
6.	A <b>food product</b> comprising <b>the extract</b> of claim 1.	1, 3, 17
7.	A <b>food product</b> comprising <b>the extract</b> of claim 5.	1, 3, 17
8.	A <b>food product</b> according to claim 6, wherein said <b>food product</b> is selected from the group consisting of food supplements, drinks, shakes, baked goods, teas, soups, cereals, pills, tablets, salads, sandwiches, and granolas.	3
9.	A pill or tablet	N/A
	comprising a <b>cruciferous</b> seed or <b>cruciferous</b> sprout, or <b>extract of said seed</b> or sprout,	1, 5, 18
	wherein said sprout is harvested between the onset of germination up to and including the 2-leaf stage.	N/A
10.	A pill or tablet according to claim 9,	N/A
	wherein said sprout is not a <i>Brassica oleracea capitata</i> , <i>Lepidium sativum</i> , <i>Sinapis alba</i> , <i>Sinapis nigra</i> , or <i>Rahpanus sativus</i> sprout.	N/A
12.	A <b>food product</b> comprising	3
	a source of glucosinolates or isothiocyanates,	N/A
	wherein said glucosinolate or isothiocyanate source is a <b>cruciferous</b> seed or <b>cruciferous</b> sprout, or <b>extract of said seed</b> or sprout, and	1, 5, 18
	wherein said sprout is (A) harvested between the onset of germination up to an including the 2-leaf stage, and (B) not a <i>Brassica oleracea capitata</i> , <i>Lepidium sativum</i> , <i>Sinapis alba</i> , <i>Sinapis nigra</i> , or <i>Raphanus sativus</i> sprout.	N/A

**D. U.S. Patent No. 6,242,018**

<b>U.S. Patent No. 6,242,018</b>		
<b>Claim</b>	<b>Text</b>	<b>Appendix A Row(s)</b>
1.	A method of preparing a <b>food product</b> rich in glucosinolates comprising	3
	<b>cruciferous</b> seeds, flour made from the <b>cruciferous</b> seeds, or a combination thereof,	5
	wherein said method comprises introducing <b>cruciferous</b> seeds, flour made from the <b>cruciferous</b> seeds, or a combination thereof, into another edible ingredient,	5
	wherein said seeds and flour are rich in glucosinolates.	N/A
2.	The method of claim 1,	N/A
	wherein said seeds and flour contain high Phase 2 enzyme-inducing potential and <b>non-toxic levels of indole glucosinolates and their breakdown products and goitrogenic hydroxybutenyl glucosinolates.</b>	7

E. U.S. Patent No. 7,303,770

U.S. Patent No. 7,303,770		
Claim	Text	Appendix A Row(s)
10.	A method of making a <b>food product</b> comprising	3
	<b>extracting glucosinolates and isothiocyanates from cruciferous plant tissue</b>	1, 5, 6, 9
	having at least 200,000 units per gram fresh weight of Phase 2 enzyme-inducing potential,	N/A
	<b>recovering said glucosinolates and isothiocyanates</b>	19
	and adding said glucosinolates and isothiocyanates to food;	N/A
	wherein said extracting comprises	N/A
	contacting said <b>plant tissue</b> with a non-toxic solvent	6
	<b>at a temperature sufficient to inactivate myrosinase enzyme activity.</b>	20
13.	The method according to claim 10,	N/A
	wherein said solvent is liquid carbon dioxide.	N/A
15.	The method of claim 10,	N/A
	wherein said <b>plant tissue</b> is selected from the group consisting of <b>cruciferous</b> sprouts measured after 3 days of growth, <b>cruciferous</b> seeds, plants and plant parts.	5, 6
16.	The method of claim 15,	N/A
	wherein said sprouts, seeds, plants or plant parts have at least 300,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.	N/A
17.	The method of claim 15,	N/A
	wherein said sprouts, seeds, plant or plant parts have at least 400,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.	N/A
18.	The method of claim 15,	N/A
	wherein said sprouts, seeds, plant or plant parts have at least 500,000 units per gram fresh weight of Phase 2 enzyme-inducing potential.	N/A
19.	The method of claim 10	N/A
	wherein said <b>food product</b> is selected from the group consisting of a bread, a drink, a soup, a salad, a sandwich and a cereal.	3
20.	The method of claim 19	N/A
	wherein said drink is a tea.	N/A
21.	The method of claim 10	N/A
	wherein said extracting further comprises <b>homogenizing said plant tissue with said non-toxic solvent.</b>	21
22.	The method of claim 15	N/A
	wherein said sprouts, seeds, plant or plant parts have at least 250,000 units per gram fresh weight of Phase 2 enzyme-	N/A

U.S. Patent No. 7,303,770		
Claim	Text	Appendix A Row(s)
	inducing potential.	
23.	The method of claim 15,	N/A
	wherein said plants are broccoli.	N/A
24.	The method of claim 15,	N/A
	wherein said plant parts are from broccoli.	N/A
26.	The method of claim 15,	N/A
	wherein said cruciferous seeds are broccoli seeds.	N/A

### III. IDENTIFICATION OF WITNESSES

Pursuant to Paragraph (3)(h)(3) of the Scheduling Order, Plaintiffs identify Mr. Edward M. Sybert as a witness Plaintiffs may call at the Claim Construction Hearing scheduled for June 16, 2008.

Pursuant to Paragraph (3)(h)(3) of the Scheduling Order, Defendant identifies Dr. Gregory R. Ziegler as a witness Defendant may call at the Claim Construction Hearing. Defendant has learned that Dr. Ziegler will be out of the country on June 16, 2008. He is available after June 26, 2008. The parties will discuss the need for expert testimony among themselves and approach the Court if there is a need to reschedule the Hearing.

Dated: May 8, 2008



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